

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:)	
)	
Pietraszek Enterprises, Inc.)	
and)	FINAL ORDER
Munson Excavating, Inc.)	
)	
Respondents)	Docket No. CWA-08-2006-0005
)	

Pursuant to 40 C.F.R. § 22.18 of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

<u>8-23-2006</u>	<u>SIGNED</u>
DATE	Elyana R. Sutin Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

In the Matter of:)	
)	
Pietraszek Enterprises, Inc.)	
and)	CONSENT AGREEMENT
Munson Excavating, Inc.)	
)	
Respondents)	Docket No. CWA-08-2006-0005
)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Pietraszek Enterprises, Inc. and Munson Excavating, Inc. (collectively, Respondents), by their undersigned representatives, hereby consent and agree as follows:

1. On December 19, 2005, Complainant issued an Administrative Penalty Complaint (Complaint) alleging that the Respondents had violated section 301(i) of the Clean Water Act (the Act), 33 U.S.C. § 1311(a). The Complaint proposed that the Respondents pay an administrative civil penalty for their violations, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).
2. For the purposes of this settlement only, Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint. Respondents do not admit to any violations of the Act or to any wrongdoing.
3. Respondents waive their right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or in this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents and Respondents' successors and assigns. Any change

in ownership or corporate status of any Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondents consent and agree to pay a civil penalty in the amount of one hundred and five thousand dollars (\$105,000) in accordance with the following payment schedule (which includes interest):

INSTALLMENT NO.	AMOUNT	DUE DATE
First Installment	\$8,323.00	August 31, 2006
Second Installment	\$8,323.00	October 31, 2006
Third Installment	\$8,323.00	January 31, 2007
Fourth Installment	\$8,323.00	April 30, 2007
Fifth Installment	\$8,323.00	July 31, 2007
Sixth Installment	\$8,323.00	October 31, 2007
Seventh Installment	\$8,323.00	January 31, 2008
Eighth Installment	\$8,323.00	April 30, 2008
Ninth Installment	\$8,323.00	July 31, 2008
Tenth Installment	\$8,323.00	October 31, 2008
Eleventh Installment	\$8,323.00	January 30, 2009
Twelfth Installment	\$8,323.00	April 30, 2009
Thirteenth Installment	\$8,313.47	July 31, 2009

- a. If any due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below.

Payments received by 11:00 AM EST are processed on the same day; those received after 11:00 AM are processed on the next business day.

- b. Each payment shall be made by remitting a cashier's or certified check, from Pietraszek Enterprises, Inc., including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

If sent by regular U.S. mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

If sent by any overnight commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

If sent by wire transfer:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of each check shall be sent simultaneously to:

Kenneth Champagne
Enforcement Officer
Water Enforcement Program (8ENF-W)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event any payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final order, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Act and its implementing regulations.

7. Any failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

9. Each undersigned signatory for a Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind that Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

11. Each party shall bear its own costs and attorney fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

13. Nothing in this Consent Agreement shall diminish the obligations of Respondent Pietraszek Enterprises, Inc., or of Adam Pietraszek or Slawomir Pietraszek, under EPA's September 30, 2002 Finding of Violation and Order for Compliance, Docket No. CWA-08-2002-43, including but not limited to all restoration and/or mitigation described in the September 3, 2004 Wetland Restoration and Preble's Meadow Jumping Mouse Habitat Mitigation and Monitoring Plan - Monument Creek Bank Stabilization Project, to which EPA granted conditional approval by letter dated November 17, 2004 from Carol Rushin, Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, to Adam Pietraszek and Slawomir Pietraszek.

14. The EPA takes no position supporting or opposing any proposal(s) by Respondent Pietraszek Enterprises, Inc. (a) to the United States Fish and Wildlife Service regarding protection of the Preble's meadow jumping mouse pursuant to the Endangered Species Act or (b) to the Federal Emergency Management Agency regarding flood plain protection, provided that any such proposal would meet Clean Water Act requirements and would not result in dredged or fill material remaining in waters of the United States.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: **Aug 23, 2006**

By: **SIGNED**
Diane Sipe, Director
Water Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
999 18th St., Suite 300
Denver, CO 80202

Date: **Aug 4, 2006**

By: **SIGNED (djj)**
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
999 18th St., Suite 300
Denver, CO 80202

PIETRASZEK ENTERPRISES, INC.
Respondent

Date:

By: **SIGNED**
Steven K. Mulliken, Attorney
Mulliken Weiner Karsh Berg & Jolivet, P.C.
Alamo Corporate Center
102 South Tejon, Suite 900
Colorado Springs, CO 80903

Date:

By: **SIGNED**
Adam Pietraszek, President
Pietraszek Enterprises, Inc.

MUNSON EXCAVATING, INC.
Respondent

Date: **8/16/06**

By: **SIGNED**
Connie H. King, Attorney
Law Firm of Connie H. King, LLC
4711 Constitution Avenue
Colorado Springs, CO 80915

Date:

By: **SIGNED**
John P. Munson, Vice President
Munson Excavating, Inc.
7080 Shoup Road
Colorado Springs, CO 80908

Certificate of Service

This is to certify that a copy of the preceding Final Order was sent to each of the following as indicated below:

Steven K. Mulliken, Attorney
Mulliken, Weiner, Karsh, Berg & Jolivet, P.C.
Alamo Corp. Center
102 S. Tejon, Suite 900
Colorado Springs, CO 80903
(by certified mail, return receipt requested)

Connie H. King, Attorney
Law Firm of Connie H. King, LLC
4711 Constitution Avenue
Colorado Springs, CO 80903
(by certified mail, return receipt requested)

Hon. Elyana R. Sutin, Regional Judicial Officer
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202
(by hand delivery)

Hon. Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460
(by EPA pouch mail)

Margaret J. (Peggy) Livingston, Enforcement Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202
(by hand delivery)

Date: August 23, 2006.

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
AUGUST 23, 2006**

